securities of M was exempt under §802.4(a) because M held exempt assets pursuant to §802.3(b) and less than $15 million of non-exempt assets. Because ''X'' acquired control of M in the earlier transaction, M is now within the person of ''X,'' and the assets of M need not be aggregated with those of N to determine if the subsequent acquisition of N will exceed the limitation for coal reserves or for non-exempt assets. Since the assets of N alone do not exceed these limitations, ''X's'' acquisition of N also is not reportable.

7. In Example 6, above, assume that ''X'' acquired 30 percent of the voting securities of M and proposes to acquire 40 percent of the voting securities of N, another entity controlled by ''Z.'' Assume also that M's assets at the time of ''X's'' acquisition of M's voting securities consisted of $90 million worth of producing coal reserves and non-exempt assets with a fair market value of $9 million, and that N's assets currently consist of $60 million worth of producing coal reserves and non-exempt assets with a fair market value of $8 million. Since ''X'' acquired a minority interest in M and intends to acquire a minority interest in N, and since M and N are controlled by ''Z,'' the assets of M and N must be aggregated, pursuant to §§801.15(b) and 801.13, to determine whether the acquisition of N's voting securities is exempt. ''X'' is required to determine the current fair market value of M's assets. If the fair market value of M's coal reserves is unchanged, the aggregated exempt assets do not exceed the limitation for coal reserves. However, if the present fair market value of N's non-exempt assets also is unchanged, the present fair market value of the non-exempt assets of M and N when aggregated is greater than $15 million. Thus the acquisition of the voting securities of N is not exempt. If ''X'' proposed to acquire 50 percent or more of the voting securities of both M and N in the same acquisition, the assets of M and N must be aggregated to determine if the acquisition of the voting securities of both issuers is exempt. Since the fair market value of the aggregated non- exempt assets exceeds $15 million, the acquisition would not be exempt.

8. ''A'' acquired 49 percent of the voting securities of M and 45 percent of the voting securities of N. Both M and N are controlled by ''B.'' At the time of the acquisition M held rights to producing coal reserves worth $90 million and N held a producing coal mine worth $90 million. This acquisition was exempt since the aggregated holdings fell below the $200 million limitation for coal in §802.3(b). A year later, ''A'' proposes to acquire an additional 10 percent of the voting securities of both M and N. In the intervening year, M has acquired coal reserves so that its holdings are now valued at $140 million, and the value of N's assets remained unchanged. ''A's'' second acquisition would not be exempt. ''A'' is required to determine the value of the exempt assets and any non-exempt assets held by any issuer whose voting securities it intends to acquire before each proposed acquisition (unless ''A'' already owns 50 percent or more of the voting securities of the issuer) to determine if the value of those holdings of the issuer falls below the limitation of the applicable exemption. Here, an assessment shows that the holdings of M and N now exceed the $200 million limitation for coal reserves in §802.3.

[43 FR 33537, July 31, 1978, as amended at 52 FR 7081, Mar. 6, 1987; 61 FR 13684, Mar. 28, 1996]

§ 801.20 Acquisitions subsequent to exceeding threshold.

Acquisitions meeting the criteria of section 7A(a), and not otherwise exempted by section 7A(c) or §802.21 or any other of these rules, are subject to the requirements of the act even though:

(a) Earlier acquisitions of assets or voting securities may have been subject to the requirements of the act;

(b) The acquiring person's holdings initially may have met or exceeded a notification threshold before the effective date of these rules; or

(c) The acquiring person's holdings initially may have met or exceeded a notification threshold by reason of increases in market values or events other than acquisitions.

Examples: 1. Person ''A'' acquires $10 million of the voting securities of person ''B'' before the effective date of these rules. If ''A'' wishes to acquire an additional $6 million of the voting securities of ''B'' after the effective date of the rules, notification will be required by reason of section 7A(a)(3)(B).

2. In example 1, assume that the value of the voting securities of ''B'' originally acquired by ''A'' has reached a present value exceeding $15 million. If ''A'' wishes to acquire *any* additional voting securities or assets of ''B,'' notification will be required. See §801.13(a).

§ 801.21 Securities and cash not considered assets when acquired.

For purposes of section 7A(a)(3) and §§801.1(h)(1), 801.12(d)(1) and 801.13(b):

(a) Cash shall not be considered an asset of the person from which it is acquired; and

(b) Neither voting or nonvoting securities nor obligations referred to in section 7A(c)(2) shall be considered assets

of another person from which they are acquired.

Examples: 1. Assume that acquiring person ''A'' acquires voting securities of issuer X from ''B,'' a person unrelated to X. Under this paragraph, the acquisition is treated only as one of voting securities, requiring ''A'' and ''X'' to comply with the requirements of the act, rather than one in which ''A'' acquires the assets of ''B,'' requiring ''A'' and ''B'' to comply. See also example 2 to § 801.30. Note that for purposes of section 7A(a)(2)—that is, for the next regularly prepared balance sheet of ''A'' referred to in § 801.11—the voting securities of X must be reflected after their acquisition; see § 801.11(c)(2).

2. In the previous example, if ''A'' acquires nonvoting securities of X from ''B,'' then under this section the acquisition would be treated only as one of nonvoting securities of X (and would be exempt under section 7A(c)(2)), rather than one in which ''A'' acquires assets of ''B,'' requiring ''A'' and ''B'' to comply. Again, the nonvoting securities of X would have to be reflected in ''A's'' next regularly prepared balance sheet for purposes of section 7A(a)(2).

3. In example 1, assume that ''B'' receives only cash from ''A'' in exchange for the voting securities of X. Under this section, ''B's'' acquisition of cash is *not* an acquisition of the ''assets'' of ''A,'' and ''B'' is not required to file notification as an acquiring person.

§ 801.30 Tender offers and acquisitions of voting securities from third parties.

(a) This section applies to:

(1) Acquisitions on a national securities exchange or through an interdealer quotation system registered with the United States Securities and Exchange Commission;

(2) Acquisitions described by § 801.31;

(3) Tender offers;

(4) Secondary acquisitions;

(5) All acquisitions (other than mergers and consolidations) in which voting securities are to be acquired from a holder or holders other than the issuer or an entity included within the same person as the issuer;

(6) Conversions; and

(7) Acquisitions of voting securities resulting from the exercise of options or warrants which are—

(i) Issued by the issuer whose voting securities are to be acquired (or by any entity included within the same person as the issuer); and

(ii) The subject of a currently effective registration statement filed with the United States Securities and Exchange Commission under the Securities Act of 1933.

(b) For acquisitions described by paragraph (a) of this section:

(1) The waiting period required under the act shall commence upon the filing of notification by the acquiring person as provided in § 803.10(a); and

(2) The acquired person shall file the notification required by the act, in accordance with these rules, no later than 5 p.m. eastern time on the 15th (or, in the case of cash tender offers, the 10th) calendar day following the date of receipt, as defined by § 803.10(a), by the Federal Trade Commission and Assistant Attorney General of the notification filed by the acquiring person. Should the 15th (or, in the case of cash tender offers, the 10th) calendar day fall on a weekend day or federal holiday, the notification shall be filed no later than 10 a.m. eastern time on the next following business day.

Examples: 1. Acquiring person ''A'' proposes to acquire from corporation B the voting securities of B's wholly owned subsidiary, corporation S. Since ''A'' is acquiring the shares of S from its parent, this section does not apply, and the waiting period does not begin until both ''A'' and ''B'' file notification.

2. Acquiring person ''A'' proposes to acquire $20 million of the voting securities of corporation X on a securities exchange. The waiting period begins when ''A'' files notification. ''X'' must file notification within 15 calendar days thereafter. The seller of the X shares is not subject to any obligations under the act.

3. Suppose that acquiring person ''A'' proposes to acquire 50 percent of the voting securities of corporation B which in turn owns 30 percent of the voting securities of corporation C. Thus ''A's'' acquisition of C's voting securities is a secondary acquisition (see § 801.4) to which this section applies because ''A'' is acquiring C's voting securities from a third party (B). Therefore, the waiting period with respect to ''A's'' acquisition of C's voting securities begins when ''A'' files its separate Notification and Report Form with respect to C, and ''C'' must file within 15 days (or in the case of a cash tender offer, 10 days) thereafter. ''A's'' primary and secondary acquisitions of the voting securities of B and C